

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-6431

ABDIEL CABAN,

Appellant

—v.—

KAZIM MOHAMMED AND MARIA MOHAMMED,

Appellees

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

DOCKETED MARCH 27, 1978
PROBABLE JURISDICTION NOTED MAY 15, 1978

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

- January 15, 1976—Petitions filed with Clerk, Surrogate's Court, Kings County.
- February 26, 1976—Citations issued to Abdiel Caban by Surrogate's Court, Kings County.
- March 8, 1976—Answers to Petitions and Cross-Petitions to adopt of Abdiel Caban and Nina Caban, filed with Clerk, Surrogate's Court, Kings County.
- March 9, 1976—Answers of Kazim Mohammed and Maria Mohammed to Cross-Petitions filed with Clerk, Surrogate's Court, Kings County.
- August 3, 1976—Opinion of Surrogate's Court, Kings County, filed with Clerk of that Court.
- September 10, 1976—Orders of Adoption filed with Clerk, Surrogate's Court, Kings County.
- September 30, 1976—Notices of Appeal by Abdiel Caban to Supreme Court of the State of New York, Appellate Division, Second Department, filed with Clerk of Surrogate's Court, Kings County.
- February 22, 1977—Order of Affirmance by Appellate Division, Second Department, filed with Clerk of that Court.
- February 22, 1977—Memorandum Opinion of Appellate Division, Second Department, filed with Clerk of that Court.
- April 12, 1977—Notice of Appeal to Court of Appeals, State of New York, filed with Clerk of Surrogate's Court, Kings County.
- November 17, 1977—Judgment of Court of Appeals dismissing appeal, filed with Clerk of that Court.
- November 17, 1977—Memorandum Opinion of Court of Appeals, filed with Clerk of that Court.
- January 10, 1978—Order of Court of Appeals denying Abdiel Caban's motion for reargument, filed with Clerk of that Court.

February 14, 1978—Order of Court of Appeals denying Abdiel Caban's second motion for reargument, filed with Clerk of that Court.

March 10, 1978—Notice of Appeal to Supreme Court of the United States, filed with Clerk of Surrogate's Court, Kings County.

March 13, 1978—Notice of Appeal to Supreme Court of the United States, filed with Clerk of Court of Appeals.

March 22, 1978—Notice of Appeal to Supreme Court of the United States, filed with Clerk of Court of Appeals.

March 27, 1978—Appellant's Jurisdiction Statement docketed with the Clerk of the Supreme Court of the United States.

May 15, 1978—Order of the Supreme Court of the United States granting Appellant's Motion for Leave to Proceed *In Forma Pauperis*.

May 15, 1978—Order of the Supreme Court of the United States noting probable jurisdiction of this case.

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20007, 1976

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW CABAN

a minor under the age of fourteen years, by
KAZIM MOHAMMED AND MARIA MOHAMMED, his wife

TO THE HONORABLE NATHAN R. SOBEL
Surrogate of Kings County:

PETITION—Filed January 16, 1976

The petition of KAZIM MOHAMMED and MARIA MOHAMMED his wife, respectfully shows:

1. That your petitioners are over the age of twenty-one years, citizens of the United States, and legally married, living together as husband and wife
2. That the post-office address and place of residence of your petitioners is 31 Ocean Parkway, Brooklyn, New York
3. That your petitioners are desirous of adopting as their own child DAVID ANDREW CABAN, a male minor child, born on the 16th day of July, 1969, at New York, New York
4. That the religious faith of said minor child is Catholic that the religious faith of the parents of said child, as petitioners are informed and verily believe is Catholic; that the religious faith of petitioner Kazim Mohammed is Christian; that the religious faith of petitioner Maria Mohammed is Catholic
5. That your petitioners' family residing with petitioners consist of Steven Kazim Mohammed, son, born on December 7, 1975.
6. The said minor child has resided continuously with petitioner Maria Mohammed (natural mother) since its birth, July 16, 1969 and with both petitioners since their marriage on January 30, 1974

7. That the occupation of your petitioner Kazim Mohammed is a taxicab driver employed by the Hector Taxi Corp., 27-39 - 86th Street, Brooklyn, New York and earns approximately \$240.00 net weekly

8. That the parent of said minor child is Maria Mohammed nee Acevedo, the natural mother and petitioner herein; that the putative father is Abdiel Caban presently residing at #565 - 85th Street, Brooklyn, New York

8.A That Abdiel Caban has abandoned the child David Andrew Caban

9. That your petitioner obtained custody of the minor child in the following manner: That the petitioner Maria Mohammed nee Acevedo is the natural mother of the minor child herein

10. That said child has no property or means of support

11. That said minor child has no general or testamentary guardian

12. That there are no persons other than those mentioned interested in this proceeding, to the best of your petitioners' information and belief, except Abdiel Caban, the putative father

13. That all persons above named are of full age except the minor herein and that all of the parties are of sound mind

14. That the person, whose adoption is sought herein, has not been previously adopted

15. That no previous application for the relief prayed for herein has been made to any court or judge

WHEREFORE, your petitioners pray for an order approving the adoption of said DAVID ANDREW CABAN by your petitioners and directing that the said DAVID ANDREW CABAN shall henceforth be regarded and treated in all respects as the child of your petitioners and be known and called by the name of DAVID ANDREW MOHAMMED

/s/ Kazim Mohammed

/s/ Maria Mohammed

[Affidavit of Petitioners and Jurat (Omitted in Printing)]

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20006, 1976

IN THE MATTER OF THE ADOPTION OF
DENISE CABAN

a minor under the age of fourteen years, by
KAZIM MOHAMMED AND MARIA MOHAMMED, his wife

TO THE HONORABLE NATHAN R. SOBEL
Surrogate of Kings County:

PETITION—Filed January 15, 1976

The petition of KAZIM MOHAMMED and MARIA MOHAMMED his wife, respectfully shows:

1. That your petitioners are over the age of twenty-one years, citizens of the United States, and legally married, living together as husband and wife

2. That the post-office address and place of residence of your petitioners is 31 Ocean Parkway, Brooklyn, New York

3. That your petitioners are desirous of adopting as their own child DENISE CABAN, a female minor child, born on the 12th day of March, 1971, at Brooklyn, New York

4. That the religious faith of said minor child is Catholic that the religious faith of the parents of said child, as petitioners are informed and verily believe is Catholic; that the religious faith of petitioner Kazim Mohammed is Christian; that the religious faith of petitioner Maria Mohammed is Catholic

5. That your petitioners' family residing with petitioners consist of Steven Kazim Mohammed, son, born on December 17, 1975

6. That said minor child has resided continuously with petitioner Maria Mohammed (natural mother) since her birth, March 12, 1971 and with both petitioners since their marriage on January 30, 1974

7. That the occupation of your petitioner Kazim Mohammed is a taxicab driver employed by the Hector Taxi Corp., 27-39 - 86th Street, Brooklyn, New York and earns approximately \$240.00 net weekly

8. That the parent of said minor child is Maria Mohammed nee Acevedo, the natural mother and petitioner herein; that the putative father is Abdiel Caban presently residing at #565 - 85th Street, Brooklyn, New York

8.A That Abdiel Caban has abandoned the child Denise Caban

9. That your petitioner obtained custody of the minor child in the following manner: That the petitioner Maria Mohammed nee Acevedo is the natural mother of the minor child herein

10. That said minor child has no property or means of support

11. That said minor child has no general or testamentary guardian

12. That there are no persons other than those herein interested in this proceeding, to the best of your petitioners' information and belief, except Abdiel Caban, the putative father

13. That all persons above named are of full age except the minor herein and that all of the parties are of sound mind

14. That the person, whose adoption is sought herein, has not been previously adopted

15. That no previous application for the relief prayed for herein has been made to any court or judge

WHEREFORE, your petitioners pray for an order approving the adoption of said DENISE CABAN by your petitioners, and directing that the said DENISE CABAN shall henceforth be regarded and treated in all respects as the child of your petitioners and be known and called by the name of DENISE MOHAMMED

/s/ Kazim Mohammed

/s/ Maria Mohammed

[Affidavit of Petitioners and Jurat (Omitted in Printing)]

IN THE SURROGATE'S COURT
KING'S COUNTY, NEW YORK

File No. 20007, 1976

CITATION

The People of The Sate of New York
By the Grace of God Free and Independent

To ABDIEL CABAN
565 - 85th Street
Brooklyn, New York

Send Greeting:

A petition having been filed by KAZIM MOHAMMED and MARIA MOHAMMED who are domiciled at 31 Ocean Parkway, Brooklyn, New York, praying for an order approving the adoption of DAVID ANDREW CABAN by the petitioners named in the said petition, KAZIM MOHAMMED and MARIA MOHAMMED, husband and wife, and directing that the said minor child shall henceforth be treated and regarded in all respects as the child of the petitioners and be known and called by the name of DAVID ANDREW MOHAMMED

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, Kings County, at the Court House, Civic Centre, 2 Johnson Street, Brooklyn, New York, on March 11th, 1976, at 9:30 A.M., why an order should not be made granting such petition for adoption by the said petitioners and a further order determining that Abdiel Caban has abandoned said minor child and dispensing with his consent to the adoption of said minor child by the petitioners.

Dated, Attested and Sealed, February 26th, 1976.

[L.S.]

HON. NATHAN R. SOBEL
Surrogate

/s/ Kevin C. Fogarty
Clerk

Name of Attorney—Morris Schulslaper

Tel. No.—212-624-7232

Address—16 Court Street, Brooklyn, New York 11241

—
This Citation is served upon you as required by law. You are not obliged to appear in person. If you fail to appear it will be assumed that you consent to the proceedings, unless you file written objections thereto. You have a right to have an attorney-at-law appear for you.

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20006, 1976

CITATION

The People of The State of New York
By the Grace of God Free and Independent

To ABDIEL CABAN
565 - 85th Street
Brooklyn, New York

Send Greeting:

A petition having been filed by KAZIM MOHAMMED and MARIA MOHAMMED who are domiciled at 31 Ocean Parkway, Brooklyn, New York, praying for an order approving the adoption of DENISE CABAN by the petitioners named in the said petition, KAZIM MOHAMMED, husband and wife, and directing that the said minor child shall henceforth be treated and regarded in all respects as the child of the petitioners and be known and called by the name of DENISE MOHAMMED

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, Kings County, at the Court House, Civic Centre, 2 Johnson Street, Brooklyn, New York, on March 11th 1976, at 9:30 A.M., why an order should not be made granting petition for adoption by the said petitioners and a further order determining that Abdiel Caban has abandoned said minor child and dispensing with his consent to the adoption of said minor child by the petitioners.

Dated, Attested and Sealed, February 26th, 1976.

[L.S.]

HON. NATHAN R. SOBEL
Surrogate

/s/ Kevin C. Fogarty
Clerk

Name of Attorney—Morris Schulslaper

Tel. No.—212-624-7232

Address—16 Court Street, Brooklyn, New York 11241

This Citation is served upon you as required by law. You are not obliged to appear in person. If you fail to appear it will be assumed that you consent to the proceedings, unless you file written objections thereto. You have a right to have an attorney-at-law appear for you.

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20007/1976

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW CABAN

a minor under the age of fourteen years by
KAZIM MOHAMMED AND MARIA MOHAMMED, his wife

ANSWER TO PETITION OF ABDIEL CABAN, NATURAL FATHER OF THE INFANT, DAVID ANDREW CABAN, AND CROSS-PETITION OF ABDIEL CABAN AND HIS WIFE, NINA CABAN—
Filed March 8, 1976

The natural father, ABDIEL CABAN, and his wife, NINA CABAN, answering the verified petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, states as follows:

FIRST: Denies each and every allegation contained in paragraphs numbered and designated as "6" and "8A".

SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as "1", "2", "3", "4", "5", "7", "9", "10", "11", "12", "13" and "15".

AS AND FOR A CROSS-PETITION FOR THE ADOPTION OF DAVID ANDREW CABAN, BY ABDIEL CABAN, THE NATURAL FATHER, AND NINA CABAN, HIS WIFE.

The Cross-Petitioners herein allege as follows:

1. That I, ABDIEL CABAN, one of the cross-petitioners herein, am the natural father and MARIA MOHAMMED is the mother of the infant, DAVID ANDREW CABAN.

2. That I and petitioner, MARIA MOHAMMED, lived together as husband and wife from about July of 1968 until some time in late March of 1974.

3. That on July 16, 1969, about one year after I began living with petitioner, MARIA MOHAMMED, my child, DAVID ANDREW CABAN, was born of the relationship between petitioner MARIA MOHAMMED and myself, and we gave the child my surname.

4. That during all the period of time petitioner MARIA MOHAMMED and I lived together, although not legally married, we held ourselves out to the world as being husband and wife, living together as such.

5. That during all that period of time, I supported, cared for and loved my child, DAVID ANDREW CABAN, who bore my name.

6. That during all that period of time, I fully acknowledged the paternity of my child, DAVID ANDREW CABAN, to the entire world.

7. That in late March of 1974, the petitioner MARIA MOHAMMED left the apartment that she resided in with me at 185 St. Mark's Avenue, Brooklyn, New York, without explanation, taking my child, DAVID ANDREW CABAN, with her.

8. That I pleaded with the said MARIA MOHAMMED to return with my child DAVID ANDREW CABAN and to continue to live with me so that I could continue to participate in the care, up-bringing and love of my child, DAVID ANDREW CABAN, but the said MARIA MOHAMMED refused.

9. That on January 30, 1974, upon information and belief, and unbeknownst to me, the said MARIA MOHAMMED married her present husband and co-petitioner, KAZIM MOHAMMED:

10. That from the time of such alleged marriage, until late March of 1974, when the said MARIA MOHAMMED left my household without justification, the petitioner, MARIA MOHAMMED, continued to reside with me as husband and wife, despite her allegation that she married the co-petitioner, KAZIM MOHAMMED, on January 30, 1974.

11. That during the period of late March, 1974 when the said MARIA MOHAMMED left our apartment at 185 St. Mark's Avenue, Brooklyn, New York, until the end of June, 1974, the said MARIA MOHAMMED delivered my child, DAVID ANDREW CABAN, to me for weekends, bringing him on Friday evening and picking him up on Sunday evening. During these periods, I gave my child all the care and attention which I could as a loving father, completely attending to my child's every need.

12. That during the period of time between petitioner MARIA MOHAMMED'S leaving our apartment in late March, 1974 up to the end of June 1974, I pleaded with the said MARIA MOHAMMED to return home with my child, DAVID ANDREW CABAN, and in this connection, proposed marriage to the petitioner, MARIA MOHAMMED, all to no avail.

13. That to show my good faith in making such offer of marriage to petitioner MARIA MOHAMMED, I obtained a divorce from my first wife, from whom I had been separated for some fourteen years prior to June of 1974.

14. That said divorce was duly granted to me in the month of June, 1974.

15. That these weekend visits with my child, DAVID ANDREW CABAN, ceased around the end of June, 1974, when the petitioner MARIA MOHAMMED disappeared with the child, DAVID ANDREW CABAN.

16. That I later learned that the petitioner, MARIA MOHAMMED, had spirited my child out of the country and sent my child to Puerto Rico to live, not with petitioner MARIA MOHAMMED, but with her parents. This deprived my child of both its parents. She took the child away from his father and, rather than care for him as the mother, she sent him away so that the child would have neither a father or a mother to take care of him.

17. That sometime in October of 1974, I learned of the whereabouts of my child from my own parents, who

reside in Puerto Rico, and who advised me that my child, DAVID ANDREW CABAN, was then living with petitioner MARIA MOHAMMED'S mother in Puerto Rico.

18. Thereafter I carried on and received correspondence with and from my parents so as to keep abreast of the whereabouts and welfare of my child, DAVID ANDREW CABAN.

19. My child, DAVID ANDREW CABAN, continued to reside in Puerto Rico, away from both of his natural parents, until November of 1975, when I assumed custody over my child, DAVID ANDREW CABAN, not as against his mother, who had abandoned the said child and remained away from him in New York while he was in Puerto Rico, but as against his maternal grandmother.

20. My child, DAVID ANDREW CABAN, resided with me and my present wife, NINA CABAN, who joins in this cross-petition for adoption, until January 15, 1976, when by order of the Family Court dated January 15, 1976, custody of my child, DAVID ANDREW CABAN, was temporarily given to the said MARIA MOHAMMED pending a hearing as to permanent custody.

21. During the period when I had custody of my child, DAVID ANDREW CABAN, I cared for, supported, loved, educated, provided clothing, medical care, and I provided for my child's every need.

22. That the said order of the Family Court provided for visitation by me on Sundays between 11:00 A.M. to 6:00 P.M., which visitation has been exercised and enjoyed by both father and child on each and every Sunday to date.

23. That I am gainfully employed and ready, willing and able to support and care for my child, DAVID ANDREW CABAN.

24. That my child, DAVID ANDREW CABAN, loves me as his father as I love him as my child, and he also loves my wife, NINA CABAN, and would prefer me and

my wife as parents, and, upon information and belief, wishes to live with me and my wife, NINA CABAN.

25. That my said child and my wife, NINA CABAN, have already established a warm loving and caring relationship with each other.

26. That my wife, NINA CABAN, is not employed outside the home, and is ready, willing and able to devote full time to the caring and up-bringing of my child and to in all respects be a loving mother to the said child.

27. That I and my wife, NINA CABAN, are in the process of purchasing a private home in Queens County, having seven rooms in all, including four bedrooms, a full basement and expansion attic, which will have ample room to accommodate my child DAVID ANDREW CABAN.

28. That I verily believe that the best interests of my child, DAVID ANDREW CABAN, will be served by granting me permanent custody of my child, DAVID ANDREW CABAN, by permitting the adoption of the said child by me and my wife, NINA CABAN, and by denying the petition of MARIA MOHAMMED and her husband, KAZIM MOHAMMED herein.

WHEREFORE, your cross-petitioner pray for an order denying the petition of MARIA MOHAMMED and KAZIM MOHAMMED and granting the cross-petition for adoption of my son, DAVID ANDREW CABAN, by me and my wife, NINA CABAN, for all of which relief no previous application has been made.

Dated: New York, New York
March 4, 1976

/s/ Abdiel Caban
ABDIEL CABAN

/s/ Nina Caban
NINA CABAN

[Affidavit of Respondents
and Jurat (Omitted in Printing)]

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20006/1976

IN THE MATTER OF THE ADOPTION OF
DENISE CABAN

a minor under the age of fourteen years by
KAZIM MOHAMMED AND MARIA MOHAMMED, his wife

ANSWER TO PETITION OF ABDIEL CABAN, NATURAL FATHER OF THE INFANT, DENISE CABAN, AND CROSS-PETITION OF ABDIEL CABAN AND HIS WIFE, NINA CABAN—Filed March 8, 1976

The natural father, ABDIEL CABAN, and his wife, NINA CABAN, answering the verified petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, states as follows:

FIRST: Denies each and every allegation contained in paragraphs numbered and designated as "6" and "8A".

SECOND: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as "1", "2", "3", "4", "5", "7", "9", "10", "11", "12", "13", and "15".

AS AND FOR A CROSS-PETITION FOR THE ADOPTION OF DENISE CABAN, BY ABDIEL CABAN, THE NATURAL FATHER, AND NINA CABAN HIS WIFE

The Cross-Petitioners herein alleged as follows:

1. That I, ABDIEL CABAN, one of the cross-petitioners herein, am the natural father and MARIA MOHAMMED is the mother of the infant, DENISE CABAN.

2. That I and petitioner, MARIA MOHAMMED, lived together as husband and wife from about July of 1968 until some time in late March of 1974.

3. That on March 12, 1971, about two and one-half years after I began living with petitioner, MARIA MOHAMMED, my child, DENISE CABAN, was born of the relationship between petitioner MARIA MOHAMMED and myself, and we gave the child my surname.

4. That during all the period of time petitioner MARIA MOHAMMED and I lived together, although not legally married, we held ourselves out to the world as being husband and wife, living together as such.

5. That during all that period of time, I supported, cared for and loved my child, DENISE CABAN, who bore my name.

6. That during all that period of time, I fully acknowledged the paternity of my child, DENISE CABAN, to the entire world.

7. That in late March of 1974, the petitioner MARIA MOHAMMED left the apartment that she resided in with me at 185 St. Mark's Avenue, Brooklyn, New York, without explanation, taking my child, DENISE CABAN with her.

8. That I pleaded with the said MARIA MOHAMMED to return with my child DENISE CABAN and to continue to live with me so that I could continue to participate in the care, upbringing and love of my child, DENISE CABAN, but the said MARIA MOHAMMED refused.

9. That on January 30, 1974, upon information and belief, and unbeknownst to me, the said MARIA MOHAMMED married her present husband and co-petitioner, KAZIM MOHAMMED.

10. That from the time of such alleged marriage, until late March of 1974, when the said MARIA MOHAMMED left my household without justification, the petitioner, MARIA MOHAMMED, continued to reside with me as husband and wife, despite her allegation that she married the co-petitioner, KAZIM MOHAMMED, on January 30, 1974.

11. That during the period of late March, 1974 when the said MARIA MOHAMMED left our apartment at 185 St. Mark's Avenue, Brooklyn, New York, until the end of June, 1974, the said MARIA MOHAMMED delivered my child, DENISE CABAN, to me for weekends, bring her on Friday evening and picking her up on Sunday evening. During these periods, I gave my child all the care and attention which I could as a loving father, completely attending to my child's every need.

12. That during the period of time between petitioner MARIA MOHAMMED'S leaving our apartment in late March, 1974 up to the end of June 1974, I pleaded with the said MARIA MOHAMMED to return home with my child, DENISE CABAN, and in this connection, proposed marriage to the petitioner, MARIA MOHAMMED, all to no avail.

13. That to show my good faith in making such offer of marriage to petitioner MARIA MOHAMMED, I obtained a divorce from my first wife, from whom I had been separated for some fourteen years prior to June of 1974.

14. That said divorce was duly granted to me in the month of June, 1974.

15. That these weekend visits with my child, DENISE CABAN, ceased around the end of June, 1974, when the petitioner MARIA MOHAMMED disappeared with the child, DENISE CABAN.

16. That I later learned that the petitioner, MARIA MOHAMMED, had spirited my child out of the country and sent my child to Puerto Rico to live, not with petitioner MARIA MOHAMMED, but with her parents. This deprived my child of both its parents. She took the child away from her father and, rather than care for her as the mother, she sent her away so that the child would have neither a father or a mother to take care of her.

17. That sometime in October of 1974, I learned of the whereabouts of my child from my own parents, who

reside in Puerto Rico, and who advised my that my child, DENISE CABAN, was then living with petitioner MARIA MOHAMMED'S mother in Puerto Rico.

18. Thereafter I carried on and received correspondence with and from my parents so as to keep abreast of the whereabouts and welfare of my child, DENISE CABAN.

19. My child, DENISE CABAN, continued to reside in Puerto Rico, away from both of her natural parents, until November of 1975, when I assumed custody over my child, DENISE CABAN, not as against her mother, who had abandoned the said child and remained away from her in New York while she was in Puerto Rico, but as against her maternal grandmother.

20. My child, DENISE CABAN, resided with me and my present wife, NINA CABAN, who joins in this cross-petition for adoption, until January 15, 1976, when by order of the Family Court dated January 15, 1976, custody of my child, DENISE CABAN, was temporarily given to the said MARIA MOHAMMED pending a hearing as to permanent custody.

21. During the period when I had custody of my child, DENISE CABAN, I cared for, supported, loved, educated, provided clothing, medical care, and I provided for my child's every need.

22. That the said order of the Family Court provided for visitation by me on Sundays between 11:00 A.M. to 6:00 P.M., which visitation has been exercised and enjoyed by both father and child on each and every Sunday to date.

23. That I am gainfully employed and ready, willing and able to support and care for my child, DENISE CABAN.

24. That my child, DENISE CABAN, loves me as her father as I love her as my child, and she also loves my wife, NINA CABAN, and would prefer me and my wife as parents, and, upon information and belief, wishes to live with me and my wife, NINA CABAN.

25. That my said child and my wife, NINA CABAN, have already established a warm loving and caring relationship with each other.

26. That my wife, NINA CABAN, is not employed outside the home, and is ready, willing and able to devote full time to the caring and up-bringing of my child and to in all respects be a loving mother to the said child.

27. That I and my wife, NINA CABAN, are in the process of purchasing a private home in Queens County, having seven rooms in all, including four bedrooms, a full basement and expansion attic, which will have ample room to accommodate my child, DENISE CABAN.

28. That I verily believe that the best interests of my child, DENISE CABAN, will be served by granting me permanent custody of my child, DENISE CABAN, by permitting the adoption of the said child by me and my wife, NINA CABAN, and by denying the petition of MARIA MOHAMMED and her husband, KAZIM MOHAMMED herein.

WHEREFORE, your cross-petitioners pray for an order denying the petition of MARIA MOHAMMED and KAZIM MOHAMMED and granting the cross-petition for adoption of my daughter, DENISE CABAN, by me and my wife, NINA CABAN, for all of which relief no previous application has been made.

Dated: New York, New York
March 4, 1976

/s/ Abdiel Caban
ABDIEL CABAN

/s/ Nina Caban
NINA CABAN

[Affidavit of Respondents and Jurat
(Omitted in Printing)]

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File #20006/76

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW CABAN
a minor under the age of fourteen years by
KAZIM MOHAMMED AND MARIA MOHAMMED, his wife

ANSWER TO THE CROSS-PETITION OF
ABDIEL CABAN and NINA CABAN
Filed March 9, 1976

MARIA MOHAMMED, the mother of DAVID ANDREW CABAN and KAZIM MOHAMMED, her lawfully wedded husband, by their attorney, MORRIS SCHULSLAPER, ESQ., in answer to the cross-petition of ABDIEL CABAN, reputedly the father of the child and NINA CABAN, respectfully set forth to the court as follows:

FIRST: Denies each and every allegation set forth in paragraph of the cross-petition marked and designated "I" except to admit that Maria Mohammed, the petitioner is the mother of David Andrew Caban.

SECOND: Denies each and every allegation set forth in paragraphs of the cross-petition marked "2", "3", "4", "5" and "6" except to admit that the child, DAVID ANDREW CABAN was born to the petitioner Maria Mohammed on July 16, 1969; that a certain certificate of birth for the said child records, by the sole act of the petitioner, the name of ABDIEL CABAN as the father; that at the time of the child's birth the petitioner, Maria Mohammed and the cross-petitioner, Abdiel Caban together occupied a premises located at 186 St. Marks Avenue, Brooklyn, New York.

THIRD: Denies each and every allegation contained in paragraphs of the cross-petition marked and designated "7", "8", "10", "11", "12" except to admit that, in on or about the latter part of the year 1973 the pe-

tioner, Maria Mohammed, together with her child, DAVID ANDREW CABAN, left the premises 185 St. Marks Avenue, Brooklyn, New York.

FOURTH: Denies each and every allegation contained in paragraphs of the cross-petition marked and designated "19", "20", "22" and "28" except to admit that on or about the 22nd day of November, 1975 the said Abdiel Caban and/or Nina Caban, and/or, on information and belief, other persons acting on their behalf and instigation, without judicial process or order but by trick, device, show and/or force of arms, captivated, detained the child, DAVID ANDREW CABAN and absconded with the infant from the home of his maternal grandmother in Puerto Rico where he was lawfully, although temporarily sojourning; that the said Abdiel Caban and Nina Caban secreted the said child from the petitioner and her husband, Kazim Mohammed, denied her information and all access to the child; physically and forcibly detained the said child from the petitioners; proclaimed, by self assumed authority, custody of the said child; that only in response to an order of the Family Court of the State of New York by the petitioner-mother made, was the custody of the child returned to her on January 15, 1976; that at no time, other than between November 22, 1975, when the cross-petitioner, by an act of violent self help, without legal authority or process and without seeking such legal authority or process secreted the child from his mother/petitioner, did the said Abdiel Caban have custody of DAVID ANDREW CABAN in law or fact; that, on January 15, 1975 only upon the petitioner consenting, the Family Court of the State of New York, County of Kings, allowed, pending a full hearing before it, the cross-petitioner/putative father, Abdiel Caban, the right to visit with the said child, DAVID ANDREW CABAN.

FIFTH: Denies each and every allegation contained in paragraph of the cross-petition marked and designated "15" and specifically denies that the petitioner, Maria Mohammed disappeared with the child, DAVID ANDREW CABAN.

SIXTH: Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the cross-petition marked and designated "13", "14", "17", "18", "21", "23", "25", "26" and "27".

WHEREFORE, the petitioners respectfully pray for an order dismissing the cross-petition of ABDIEL CABAN, the reputed father of DAVID ANDREW CABAN and NINA CABAN and; the consent of the said ABDIEL CABAN thereto not being statutorily required, that his objection to the herein petition for the adoption of DAVID ANDREW CABAN be dismissed; that the petition for the adoption of the said child proceed accordingly and; for such other and further relief as may recommend itself to the court.

MORRIS SCHULSLAPER
Attorney for Petitioners,
Kazim and Maria Mohammed

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File #20006/76

IN THE MATTER OF THE ADOPTION OF
DENISE CABAN

a minor under the age of fourteen years
by KAZIM MOHAMMED and MARIA MOHAMMED, his wife

ANSWER TO THE CROSS-PETITION OF
ABDIEL CABAN and NINA CABAN
Filed March 9, 1976

MARIA MOHAMMED, the mother of DENISE CABAN and KAZIM MOHAMMED, her lawfully wedded husband, by their attorney, MORRIS SCHULSLAPER, ESQ., in answer to the cross-petition of ABDIEL CABAN, reputedly the father of the child and NINA CABAN, respectfully set forth to the court as follows:

FIRST: Denies each and every allegation set forth in paragraph of the cross-petition marked and designated "1" except to admit that Maria Mohammed, the petitioner is the mother of Denise Caban.

SECOND: Denies each and every allegation set forth in paragraphs of the cross-petition marked "2", "3", "4", "5" and "6" except to admit that the child, DENISE CABAN was born to the petitioner Maria Mohammed on March 12, 1971; that a certain certificate of birth for the said child records, by the sole act of the petitioner, the name of ABDIEL CABAN as the father; that at the time of the child's birth the petitioner, Maria Mohammed and the cross-petitioner, Abdiel Caban together occupied a premises located at 185 St. Marks Avenue, Brooklyn, New York.

THIRD: Denies each and every allegation contained in paragraphs of the cross-petition marked and designated "7", "8", "10", "11", "12" except to admit that, in, on or about the latter part of the year 1973 the petitioner,

Maria Mohammed, together with her child, DENISE CABAN, left the premises 185 St. Marks Avenue, Brooklyn, New York.

FOURTH: Denies each and every allegation contained in paragraphs of the cross-petition marked and designated "19", "20", "22" and "28" except to admit that on or about the 22nd day of November, 1975 the said Abdiel Caban and/or Nina Caban, and/or, on information and belief, other persons acting on their behalf and instigation, without judicial process or order but by trick, device, show and/or force of arms, captivated, detained the child, DENISE CABAN and absconded with the infant from the home of her maternal grandmother in Puerto Rico where she was lawfully, although temporarily sojourning; that the said Abdiel Caban and Nina Caban secreted the said child from the petitioner and her husband, Kazim Mohammed, denied her information and all access to the child; physically and forcibly detained the said child from the petitioners, proclaimed, by self assumed authority, custody of the said child; that only in response to an order of the Family Court of the State of New York by the petitioner-mother made, was the custody of the child returned to her on January 15, 1976; that at no time, other than between November 22, 1975 when the cross-petitioner, by an act of violent self help, without legal authority or process and without seeking such legal authority or process secreted the child from his mother/petitioner, did the said Abdiel Caban have custody of DENISE CABAN in law or fact; that, on January 15, 1975 only upon the petitioner consenting, the Family Court of the State of New York, County of Kings, allowed, pending a full hearing before it, the cross-petitioner/putative father, Abdiel Caban, the right to visit with the said child, DENISE CABAN.

FIFTH: Denies each and every allegation contained in paragraph of the cross-petition marked and designated "15" and specifically denies that the petitioner, Maria Mohammed disappeared with the child, DENISE CABAN.

SIXTH: Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations

contained in paragraphs of the cross-petition marked and designated "13", "14", "17", "18", "21", "23", "25", "26" and "27".

WHEREFORE, the petitioners respectfully pray for an order dismissing the cross-petition of ABDIEL CABAN, the reputed father of DENISE CABAN and NINA CABAN and; the consent of the said ABDIEL CABAN thereto not being statutorily required, that his objection to the herein petition for the adoption of DENISE CABAN be dismissed; that the petition for the adoption of the said child proceed accordingly and; for such other and further relief as may recommend itself to the court.

MORRIS SCHULSLAPER
Attorney for Petitioners,
Kazim and Maria Mohammed

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 2006-1976
File No. 2007-1976

IN THE MATTER OF THE ADOPTIONS OF
DAVID ANDREW CABAN and DENISE CABAN,
minors under the age of fourteen years by
KAZIM MOHAMMED and MARIA MOHAMMED, his wife

OPINION—August 3, 1976

SOBEL, S.

The stepfather, married since January 1974 to the natural mother of David (age 7) and Denise (age 5), petitions for their adoption.

The adoption is opposed by the putative father of the two children. Although a putative father's consent to such an adoption is not a legal necessity, he is entitled to an opportunity to be heard in opposition to the proposed stepfather adoption. (*Stanley v. Illinois*, 405 U.S. 645; *Matter of Malpica-Orsini*, 36 N Y 2d 568).

What considerations enter into such a hearing?

When the proposed adoptive parents are both blood strangers to the adoptive child and the objecting putative father is himself proposing to adopt, then a modified "flicker of interest rule" should be applied. (See *Matter of Susan W. v. Talbot*, 34 N Y 2d 76, 80.)

However, quite a different situation is presented when the putative father opposes the adoption by the stepfather married to the natural mother having custody of the child. A putative father opposing such an adoption, without the consent of the natural mother, has himself no prospect of adopting the child. His motive in opposing the adoption is therefore an important consideration. As this Court has noted, too often the continued interest is not in the

child but rather in the natural mother and whether such interest is labelled "love" or "hatred"—it really makes little difference—the purpose is to preserve in some manner, however oblique, the dissolved former relationship. Motive however is very difficult for a court to discern for often the objecting father is not himself consciously aware of it.

Whatever the motive for the opposition to the adoption, the consequences are the same—harassment of the natural mother in her new relationship and embarrassment to the child who though living with and being supported in the new family may not in school and elsewhere bear the family name.

The prime objective of allowing a putative father to be heard is therefore not to determine the degree of his continued interest in the child but rather to determine the best interests of the child. Any evidence the putative father may offer concerning the solidity of the marriage and the concern and treatment of the child in the new family is particularly relevant.

The background facts are therefore only briefly noted.

The natural mother and putative father lived together from 1968 through 1973. During this period the putative father was married but separated from his first wife whom he had married in 1955 and by whom he had two daughters. During this entire relationship both the natural mother and the putative father were employed and contributed to the support of the family.

In January of 1974, the natural mother left the putative father to marry the petitioner (1/30/74). He was aware of the former relationship and accepted the two children.

After the marriage, the putative father continued to see the two children who frequently visited with the maternal grandmother with whom he had a good relationship.

In late 1974 or early 1975 the maternal grandmother moved to Puerto Rico and the two children accompanied

her. The natural mother and petitioning stepfather planned permanently to join the children there after their own child which she was expecting was born.

The putative father during this period requested and received permission to visit with the children during his visits to his own family in Puerto Rico. During one of these visits, instead of returning the children to the maternal grandmother, he brought them back with him to New York, concealing their whereabouts. He did however consult an attorney who communicated to the natural mother a proposal that each have custody of one of the children. From the attorney, the natural mother and petitioning stepfather obtained the address of the children. Their attempts with the aid of the police to regain custody was frustrated again by the removal of the children to a new address. A proceeding in the Family Court resulted in temporary custody being awarded to the mother. The hearing has been adjourned pending the outcome of these adoption proceedings.

The natural mother and the petitioning stepfather have been married since January 1974. They are both in their early twenties. They have had a child in 1975. Both are employed, the natural mother as a secretary earning \$200 a week, the petitioning stepfather as a taxi driver earning \$250 a week. The children are not old enough to be articulate; the oldest is able however to express "love" for both his "fathers." The children are obviously well cared for.

The objecting putative father is 39 years of age. As noted he was married in 1955 and has two daughters by his first wife ages 16 and 20, whom he testifies he supports. He testifies that he has been divorced from his first wife and has recently remarried a widow with two children. He is employed by the Telephone Company at a salary of \$268 a week and supports his new wife and family. He justifies his conduct in removing the children

without permission from their lawful custody by his concern for their welfare. His testimony is belied by the appearance and credible testimony of the maternal grandmother from whose temporary custody the children were snatched.

There is absolutely no evidence, credible or otherwise, that the new marriage of the natural mother is other than solid or permanent; and no evidence whatsoever that the children are not well cared for and healthy. Nothing therefore justifies a denial of the petition other than that the putative father professes that he loves the children and fervently desires that they continue to bear his name. This is not enough however sincerely motivated.

The contention that the natural mother "abandoned" the children by permitting the children to accompany their grandmother to Puerto Rico is dismissed. Not a scintilla of evidence supports such contention. The proof is to the contrary.

The objections of the putative father are dismissed on the evidence. The stepfather adoption shall proceed according to law.

Settle decree.

/s/ NATHAN R. SOBEL
Surrogate

Dated: August 3, 1976.

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 200007

IN THE MATTER OF THE ADOPTION OF
A minor under the age of fourteen years by
KAZIM MOHAMMED and MARIA MOHAMMED, his wife

ORDER—September 10, 1976

The petition of Kazim Mohammed and Maria Mohammed, his wife duly verified the 13th day of January, 1976 for an order approving the adoption of David Andrew, a minor under the age of fourteen years and directing that the said minor child shall thereafter and henceforth be treated and regarded in all respects as the child of the petitioners to be known and called by the name of David Andrew Mohammed and a citation having thereupon issued on February 4, 1976 and duly served upon Abdiel Caban and the said Abdiel Caban having appeared, by Danzig, Bunks & Silk Abe Bunks, Esq. of counsel on February 26, 1976 the return date for the citation and opposing and having thereafter served an answer verified the 4th day of March 1976 and an affidavit duly sworn to by the said Abdiel Caban on the 4th day of March 1976 objecting to the proposed adoption of David Andrew, a minor child under the age of fourteen years, by the petitioners Kazim Mohammed and Maria Mohammed, his wife and natural mother of the said child, and the said matter having regularly come on to be heard before Renee Roth, Esq., a Law Assistant to the Surrogate of Kings County on the 22nd day of March, 1976 and the 30th day of April, 1976 and the petitioners Kazim Mohammed and Maria Mohammed having appeared in person and by Morris Schulslaper, Esq., their attorney in support of the petition, and Abdiel Caban in person and

by Abe Bunks, Esq., his attorney having appeared in opposition thereto and David Andrew, a minor under the age of fourteen years having been produced before the court and the said parties having been examined and a hearing having been had and testimony having been taken with respect to the issues herein involved and more particularly with respect to the alleged abandonment of David Andrew, a minor under the age of fourteen years, by Maria Mohammed, his natural mother and after hearing the petitioners, Kazim Mohammed, Maria Mohammed and their attorney, Morris Schulslaper, Esq., in support of the petition and after hearing Abdiel Caban and Abe Bunks, Esq., his attorney, in opposition to the petition and an investigation having been duly ordered to verify the truth of the allegation set forth in the petition, the instrument or agreement of adoption and other papers in the proceeding and such other facts relating to the said infant, David Andrew and to the adoptive parent as would give me full knowledge as to the desirability of approving the said adoption and the investigator having reported that the facts and conditions as set forth in the petition, the instrument or agreement of adoption and other papers in this proceeding are true and are fully stated, and further that in her opinion the adoption of said minor, David Andrew, as prayed for in the petition would be in the best interests of said minor; and due deliberation having been had and a decision of this court having been rendered and filed with this court on August 3, 1976;

IT appearing to my satisfaction that the moral and temporal interests of David Andrew, an infant under the age of fourteen years will be promoted by granting the petition of the said Kazim Mohammed and Maria Mohammed, his wife and approving the proposed adoption; and it appearing to my satisfaction that there is no reasonable objection to the change of name proposed,

NOW, on motion of Morris Schulslaper, Esq., attorney for the petitioners;

ORDERED, ADJUDGED and DECREED, that the contention that the natural mother, Maria Mohammed abandoned the child David Andrew bearing not a scintilla

of evidence to support such contention, and the proof being to the contrary, be and now is, dismissed, and it is further;

ORDERED, ADJUDGED and DECREED, that Abdiel Caban having been accorded a full hearing, his objection to the proposed adoption of David Andrew, an infant under the age of fourteen years, by Kazim Mohammed and Maria Mohammed, his wife and the natural mother of the minor child be, and on the evidence, is now dismissed, and it is further;

ORDERED, ADJUDGED and DECREED, that the petition of Kazim Mohammed and Maria Mohammed, his wife for the adoption of said minor, David Andrew born on the 16th day of July 1969 in New York, New York be and the same is hereby granted and that such adoption and the agreement therefore submitted upon this application be and the same is hereby in all respects approved and it is;

Further Ordered, that the minor, David Andrew shall be henceforth regarded and treated in all respects as the child of the said Kazim Mohammed and Maria Mohammed, his wife and be known and called by the name David Andrew Mohammed.

/s/ Nathan R. Sobel
NATHAN R. SOBEL
Surrogate

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 200006

IN THE MATTER OF THE ADOPTION OF
DENISE CABAN

A minor under the age of fourteen years by
KAZIM MOHAMMED and MARIA MOHAMMED, his wife

ORDER—September 10, 1976

The petition of Kazim Mohammed and Maria Mohammed, his wife duly verified the 13th day of January, 1976 for an order approving the adoption of Denise, a minor under the age of fourteen years and directing that the said minor child shall thereafter and henceforth be treated and regarded in all respects as the child of the petitioners to be known and called by the name of Denise Mohammed and a citation having thereupon issued on February 4, 1976 and duly served upon Abdiel Caban and the said Abdiel Caban having appeared, by Danzig, Bunks & Silk Abe Bunks, Esq., of counsel on February 26, 1976 the return date for the citation and opposing and having thereafter served an answer verified the 4th day of March 1976 and an affidavit duly sworn to by the said Abdiel Caban on the 4th day of March 1976 objecting to the proposed adoption of David Andrew, a minor child under the age of fourteen years, by the petitioners Kazim Mohammed and Maria Mohammed, his wife and natural mother of the said child, and the said matter having regularly come on to be heard before Renee Roth, Esq., a Law Assistant to the Surrogate of Kings County on the 22nd day of March, 1976 and the 30th day of April, 1976 and the petitioners Kazim Mohammed and Maria Mohammed having appeared in person and by Morris Schulslaper, Esq., their attorney in support of the petition, and Abdiel

Caban in person and by Abe Bunks, Esq., his attorney having appeared in opposition thereto and Denise, a minor under the age of fourteen years having been produced before the court and the said parties having been examined and a hearing having been had and testimony having been taken with respect to the issues herein involved and more particularly with respect to the alleged abandonment of Denise, a minor under the age of fourteen years, by Maria Mohammed, her natural mother and after hearing the petitioners, Kazim Mohammed, Maria Mohammed and their attorney, Morris Schulslaper Esq., in support of the petition and after hearing Abdiel Caban and Abe Bunks, Esq., his attorney, in opposition to the petition and an investigation having been duly ordered to verify the truth ordered to verify the truth of the allegation set forth in the petition, the instrument or agreement or agreement of adoption and other papers in the proceeding and such other facts relating to the said infant, Denise and to the adoptive parent as would give me full knowledge as to the desirability of approving the said adoption and the investigator having reported that the facts and conditions as set forth in the petition, the instrument or agreement of adoption and other papers in this proceeding are true and are fully stated, and further that in her opinion the adoption of said minor, Denise, as prayed for in the petition would be in the best interests of said minor; and due deliberation having been had and a decision of this court having been rendered and filed with this court on August 3, 1976;

IT appearing to my satisfaction that the moral and temporal interests of Denise, an infant under the age of fourteen years will be promoted by granting the petition of the said Kazim Mohammed and Maria Mohammed, his wife and approving the proposed adoption; and it appearing to my satisfaction that there is no reasonable objection to the change of name proposed,

NOW, on motion of Morris Schulslaper, Esq., attorney for the petitioners;

ORDERED, ADJUDGED and DECREED, that the contention that the natural mother, Maria Mohammed

abandoned the child Denise bearing not a scintilla of evidence to support such contention and the proof being to the contrary, be and now is, dismissed, and it is further;

ORDERED, ADJUDGED and DECREED, that Abdiel Caban having been accorded a full hearing, his objection to the proposed adoption of Denise, an infant under the age of fourteen years, by Kazim Mohammed and Maria Mohammed, his wife and the natural mother of the minor child be, and on the evidence, is now dismissed, and it is further;

ORDERED, ADJUDGED and DECREED, that the petition of Kazim Mohammed and Maria Mohammed, his wife for the adoption of said minor, Denise born on the 12th day of March 1971 in Brooklyn, New York be and the same is hereby granted and that such adoption and the agreement therefore submitted upon this application be and the same is hereby in all respects approved and it is;

Further Ordered, that the minor, Denise shall be henceforth regarded and treated in all respects as the child of the said Kazim Mohammed and Maria Mohammed, his wife and be known and called by the name Denise Mohammed.

/s/ Nathan R. Sobel
NATHAN R. SOBEL
Surrogate

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20007 1976

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW CABAN
a minor under the age of fourteen years by
KAZIM MOHAMMED and MARIA MOHAMMED, his wife

ORDER APPROVING ADOPTION—September 10, 1976

On the petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, adults, duly verified the 13th day of January 1976, and duly reverified before me the day of Sep. 10, 1976, and the affidavits of MORRIS SCHULSLAPER, ESQ. duly sworn to before me the day of Sep. 10, 1976, and the above named parties having severally appeared before me together with DAVID ANDREW CABAN, a minor under the age of fourteen years, and said parties constituting all the parties required to appear before me pursuant to the provisions of an Act relating to the domestic relations, constituting chapter fourteen of the Consolidated Laws, as amended, and said parties having been examined by me, as required by said law, and said parties having presented to me an instrument containing substantially the consents required by said law, an agreement on the part of the adoptive parents to adopt and treat the minor as their own lawful child, and a statement of the date and place of birth of the person to be adopted, as nearly as the same can be ascertained, the religious faith of the parents and of the child, the manner in which the adoptive parents obtained the child, and said instrument having been duly signed, verified and acknowledged as required by law by each person whose consent is necessary to the adoption.

And Narcissus Frett, having been specifically designated by me to make an investigation to verify the truth of

the allegations set forth in the petition, the instrument or agreement of adoption and other papers in this proceeding and such other facts relating to the said infant DAVID ANDREW CABAN and to the adoptive parents as would give me full knowledge as to the desirability of approving said adoption, and the said investigator, Narcissus Frett, having made her report in writing dated 5/28, 1976 and the same having been filed in this Court; and said investigator having reported that the facts and conditions as set forth in the petition, the instrument or agreement of adoption and other papers in this proceeding are true and are fairly stated, and further reporting that in her opinion the adoption of said minor DAVID ANDREW CABAN, as prayed for in the petition herein would be for the best interests of said minor;

And it appearing to my satisfaction that the moral and temporal interests of the said minor DAVID ANDREW CABAN will be promoted by granting the petition of said KAZIM MOHAMMED and MARIA MOHAMMED, his wife, and approving the proposed adoption; and it appearing to my satisfaction that there is no reasonable objection to the change of name proposed, DAVID ANDREW MOHAMMED

NOW, ON MOTION OF MORRIS SCHULSLAPER, ESQ. Attorney for the petitioners herein, it is

ORDERED, that the petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, for the adoption of said minor born on the 16th day of July, 1969 in New York, New York be and the same hereby is granted and that such adoption and the agreement therefor submitted upon this application be and the same hereby are in all respects approved and it is

FURTHER ORDERED, that the minor, DAVID ANDREW CABAN, shall be henceforth regarded and treated in all respects as the child of said KAZIM MOHAMMED and MARIA MOHAMMED his wife, and be known and called by the name of DAVID ANDREW MOHAMMED.

/s/ NATHAN R. SOBEL
Surrogate

IN THE SURROGATE'S COURT
KINGS COUNTY, NEW YORK

File No. 20006 1976

IN THE MATTER OF THE ADOPTION OF
DENISE CABAN

a minor under the age of fourteen years by
KAZIM MOHAMMED and MARIA MOHAMMED, his wife

ORDER APPROVING ADOPTION—September 10, 1976

On the petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, adults, duly verified the 13th day of January, 1976, and duly reverified before me the day of Sep. 10, 1976, and the affidavits of MORRIS SCHULSLAPER, ESQ. duly sworn to before me the day of Sep. 10, 1976, and the above named parties having severally appeared before me together with DENISE CABAN, a minor under the age of fourteen years, and said parties constituting all the parties required to appear before me pursuant to the provisions of an Act relating to the domestic relations, constituting chapter fourteen of the Consolidated Laws, as amended, and said parties having been examined by me, as required by said law, an agreement on the part of the adoptive parents to adopt and treat the minor as their own lawful child, and a statement of the date and place of birth of the person to be adopted, as nearly as the same can be ascertained, the religious faith of the parents and of the child, the manner in which the adoptive parents obtained the child, and said instrument having been duly signed, verified and acknowledged as required by law by each person whose consent is necessary to the adoption.

And Narcissus Frett, having been specifically designated by me to make an investigation to verify the truth of the allegations set forth in the petition, the instrument

or agreement of adoption and other papers in this proceeding and such other facts relating to the said infant DENISE CABAN and to the adoptive parents as would give me full knowledge as to the desirability of approving said adoption, and the said investigator, Narcissus Frett, having made her report in writing dated 5/28, 1976 and the same having been filed in this Court; and said investigator having reported that the facts and conditions as set forth in the petition, the instrument or agreement of adoption and other papers in this proceeding are true and are fairly stated, and further reporting that in her opinion the adoption of said minor DENISE CABAN, as prayed for in the petition herein would be for the best interests of said minor;

And it appearing to my satisfaction that the moral and temporal interests of the minor DENISE CABAN will be promoted by granting the petition of said KAZIM MOHAMMED and MARIA MOHAMMED, his wife, and approving the proposed adoption; and it appearing to my satisfaction that there is no reasonable objection to the change of name proposed,

NOW, ON MOTION OF MORRIS SCHULSLAPER, ESQ. Attorney for the petitioners herein, it is

ORDERED, that the petition of KAZIM MOHAMMED and MARIA MOHAMMED, his wife, for the adoption of said minor born on the 12th day of March, 1971 in Brooklyn, New York be and the same hereby is granted and that such adoption and the agreement therefor submitted upon this application be and the same hereby are in all respects approved and it is

FURTHER ORDERED, that the minor, DENISE CABAN, shall be henceforth regarded and treated in all respects as the child of said KAZIM MOHAMMED and MARIA MOHAMMED, his wife, and be known and called by the name of DENISE MOHAMMED.

/s/ NATHAN R. SOBEL
Surrogate

IN THE SUPREME COURT
OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

— A D 2d —

A—February 1, 1977

181 E IN THE MATTER OF DAVID ANDREW C.
181 AE (ANONYMOUS).

182 E
182 AE KAZIM M. (ANONYMOUS) ET AL.,
RESPONDENTS; ABDIEL C. (ANONYMOUS),
APPELLANT.

IN THE MATTER OF DENISE C. (ANONYMOUS).

KAZIM M. (ANONYMOUS) ET AL.,
RESPONDENTS; ABDIEL C. (ANONYMOUS),
APPELLANT.

Danzig, Bunks & Silk, New York, N.Y. (Robert H. Silk and Abe Bunks of counsel), for appellant.

Morris Schulslder, Brooklyn, N.Y., for respondents.

MEMORANDUM OPINION—Filed February 22, 1977

In two adoption proceedings, the putative father of the children appeals from four orders of the Surrogate's Court, Kings County, all dated September 10, 1976, and made after a hearing, two of which, *inter alia*, dismissed his objections to the respective adoptions and two of which approved the respective adoptions.

Orders affirmed, with one bill of costs to respondents.

Appellant contends that section 111 of the Domestic Relations Law is unconstitutional insofar as it denies to the putative father of a child born out of wedlock the same rights as to the approval of a proposed adoption as are enjoyed by the child's mother and by the father of a child

born in wedlock. That very claim was found to be without merit in *Matter of Malpica-Orsini* (36 NY2d 568, app. dsmd. *sub nom. Orsini v Blasi*, 423 US 1042).

RABIN, Acting P.J., SHAPIRO, TITONE and O'CONNOR, JJ., concur.

February 22, 1977

IN RE C., DAVID and DENISE	181 E
(ANONYMOUS), M., KAZIM (ANONYMOUS);	181 AE
C., ABDIEL (ANONYMOUS).	182 E
	182 AE

IN THE SUPREME COURT
OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

HON. SAMUEL RABIN, Acting Presiding Justice
HON. J. IRWIN SHAPIRO,
HON. VITO J. TITONE,
HON. FRANK D. O'CONNOR,
Associate Justices

IN THE MATTER OF DAVID ANDREW C. (ANONYMOUS).
KAZIM M. (ANONYMOUS) ET AL., RESPONDENTS;
ABDIEL C. (ANONYMOUS), APPELLANT.

IN THE MATTER OF DENISE C. (ANONYMOUS).
KAZIM M. (ANONYMOUS) ET AL., RESPONDENTS;
ABDIEL C. (ANONYMOUS), APPELLANT.

ORDER ON APPEALS FROM ORDERS—
February 22, 1977

In the above entitled causes, the above named Abdiel C. (anonymous), putative father and respondent in the court below, having appealed to this court from four orders of the Surrogate's Court, Kings County, all dated September 10, 1976, and made after a hearing, two of which, *inter alia*, dismissed his objections to the respective adoptions and two of which approved the respective adoptions; and the said appeals having been argued by Robert H. Silk, Esq., of counsel for the appellant and argued by Morris Schulslaper, Esq., of counsel for the respondents, due deliberation having been had thereon;

and upon this court's opinion and decision slip heretofore filed and made a part hereof, it is

ORDERED that the orders appealed from are hereby unanimously affirmed, with one bill of costs to respondents.

Enter:

/s/ IRVING N. SELKIN
Clerk of the Appellate
Division

IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

IN THE MATTER OF THE ADOPTION OF
DAVID A. C. (ANONYMOUS).
KAZIM M. ET AL., RESPONDENTS;
ABDIEL C., APPELLANT.

IN THE MATTER OF THE ADOPTION OF
DENISE C. (ANONYMOUS).
KAZIM M. ET AL., RESPONDENTS;
ABDIEL C., APPELLANT.

Argued October 13, 1977; decided November 17, 1977

MEMORANDUM

Appeal dismissed, with costs. The purportedly direct and dispositive constitutional issues underlying this appeal are no more than a restatement of questions whose merit has been clearly resolved against appellant's position (*Matter of Malpica-Orsini*, 36 NY2d 568, app dsmd sub nom. *Orsini v Blasi*, 423 US 1042), and must be held to lack the degree of substantiality necessary to sustain this appeal as of right under CPLR 5601 (subd [b], par 1) (*Tabankin v Codd*, 40 NY2d 893; *People ex rel. Uviller v Luger*, 38 NY2d 854; see NY Const, art VI, § 3, subd b). Accordingly, it must be dismissed (Cohen and Karger, Powers of the New York Court of Appeals, § 55, p. 254).

Chief Judge BREITEL and Judges JASEN, GABRIELLI, JONES, WACHTLER, FUCHSBERG and COOKE concur in memorandum.

Appeal dismissed.

IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

The Hon. Charles D. Breitell, Chief Judge, Presiding

2 No. 561

IN THE MATTER OF DAVID ANDREW C. (ANONYMOUS).

KAZIM (ANONYMOUS) & ano., RESPONDENTS.

ABDIEL C. (ANONYMOUS), APPELLANT.

IN THE MATTER OF DENISE C. (ANONYMOUS).

KAZIM (ANONYMOUS) & ano., RESPONDENTS.

ABDIEL C. (ANONYMOUS), APPELLANT.

The appellant(s) in the above entitled appeal appeared by Danzig, Bunks & Silk; the respondent(s) appeared by Morris Schulslaper.

JUDGMENT AND REMITTITUR—
Filed November 17, 1977

The Court, after due deliberation, orders and adjudges that the appeal is dismissed, with costs, in a memorandum.

The Court further orders that the papers required to be filed and this record of the proceedings in this Court be remitted to the Surrogate's Court, Kings County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

/s/ Joseph W. Bellacosa
JOSEPH W. BELLACOSA
Clerk of the Court

Court of Appeals, Clerk's Office, Albany,
November 17, 1977.

IN THE COURT OF APPEALS
STATE OF NEW YORK

Present, Hon. Charles D. Breitel, Chief Judge, Presiding.

Mo. No. 1148

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW C. (ANONYMOUS), a Minor &c., by
KAZIM (ANONYMOUS) ET AL., RESPONDENTS,
ABDIEL C. (ANONYMOUS), APPELLANT.

IN THE MATTER OF THE ADOPTION OF
DENISE C. (ANONYMOUS), a Minor &c., by
KAZIM (ANONYMOUS) ET AL., RESPONDENTS,
ABDIEL C. (ANONYMOUS), APPELLANT.

ORDER DENYING MOTION FOR REARGUMENT—
January 10, 1978

A motion for reargument in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Joseph W. Bellacosa
JOSEPH W. BELLACOSA
Clerk of the Court

IN THE COURT OF APPEALS
STATE OF NEW YORK

Present, Hon. Charles D. Breitel, Chief Judge, Presiding.

Mo. No. 111

IN THE MATTER OF THE ADOPTION OF
DAVID ANDREW C. (ANONYMOUS), a Minor &c., by
KAZIM (ANONYMOUS) ET AL., RESPONDENTS,
ABDIEL C. (ANONYMOUS), APPELLANT.

IN THE MATTER OF THE ADOPTION OF
DENISE C. (ANONYMOUS), a Minor &c., by
KAZIM (ANONYMOUS) ET AL., RESPONDENTS,
ABDIEL C. (ANONYMOUS), APPELLANT.

ORDER DENYING MOTION FOR REARGUMENT—
February 14, 1978

A motion for reargument in the above cause having heretofore been made upon the part of the appellant and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Joseph W. Bellacosa
JOSEPH W. BELLACOSA
Clerk of the Court

SUPREME COURT OF THE UNITED STATES

No. 77-6431

ABDIEL CABAN, APPELLANT

v.

KAZIM MOHAMMED and MARIA MOHAMMED

ON CONSIDERATION of the motion of appellant for
leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion
be, and the same is hereby, granted.

May 15, 1978

SUPREME COURT OF THE UNITED STATES

No. 77-6431

ABDIEL CABAN, APPELLANT

v.

KAZIM MOHAMMED and MARIA MOHAMMED

APPEAL from the Court of Appeals of New York.

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.

May 15, 1978